

Message Text

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ORIGIN L-03

INFO OCT-01 NEA-10 ISO-00 PM-04 MC-02 SS-15 SP-02 AID-05

IGA-02 OMB-01 EB-07 COME-00 TRSE-00 CIAE-00 INR-07

NSAE-00 NSC-05 /064 R

DRAFTED BY L/PM:TBOREK/JMICHEL:BH

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P:MR.DEFORD

S/S-O: MR. TANNER

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P R 102233Z APR 76

FM SECSTATE WASHDC

TO AMEMBASSY JIDDA PRIORITY

INFO AMEMBASSY KUWAIT

AMEMBASSY ABU DHABI

AMEMBASSY MANAMA

C O N F I D E N T I A L STATE 087605

E.O. 11652: GDS

TAGS: MASS, SA

SUBJECT: RAYTHEON NEGOTIATION WITH SAG FOR IMPROVED HAWK

REF: JIDDA 2485 (NOTAL)

1. FOLLOWING IS RESPONSE TO QUESTIONS CONCERNING FY 1976
SECURITY ASSISTANCE LEGISLATION POSED PARA 2 REFTTEL,
ARISING FROM RAYTHEON'S NEGOTIATIONS WITH SAG FOR COMMER-
CIAL SALE OF I-HAWK.

2. PROPOSED FY 1976 SECURITY ASSISTANCE AUTHORIZATION
BILL RECENTLY REPORTED OUT BY HOUSE-SENATE CONFERENCE
AMENDS FOREIGN MILITARY SALES ACT (FMSA) BY ADDING NEW
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SECTION 38 WHICH REPEALS SECTION 414 OF MUTUAL SECURITY

ACT OF 1954 AND INCORPORATES AS PART OF THE FMSA SUB-
STANCE OF THAT STATUTE WITH RESPECT TO LICENSING OF COM-
MERCIAL EXPORTS OF ITEMS AND DATA ON U.S. MUNITIONS LIST.
SUBSECTION B(3) OF NEW SECTION 38 PROVIDES QUOTE NO LICENSE
MAY BE ISSUED UNDER THIS ACT FOR THE EXPORT OF MAJOR DEFENSE
EQUIPMENT SOLD UNDER A CONTRACT IN THE AMOUNT OF DOLS
25,000,000 OR MORE TO ANY FOREIGN COUNTRY WHICH IS NOT
A MEMBER OF THE NORTH ATLANTIC TREATY ORGANIZATION UNLESS
SUCH MAJOR DEFENSE EQUIPMENT WAS SOLD UNDER THIS ACT. UN-
QUOTE. "MAJOR DEFENSE EQUIPMENT" IS DEFINED AS QUOTE ANY
ITEM OF SIGNIFICANT COMBAT EQUIPMENT ON THE UNITED STATES

MUNITIONS LIST HAVING A NON-RECURRING RESEARCH AND DEVELOP-
MENT COST OF MORE THAN DOLS 50,000,000 OR A TOTAL PRO-
DUCTION COST OF MORE THAN DOLS 200,000,000. UNQUOTE.

3. EFFECT INSOFAR AS SAUDI ARABIA IS CONCERNED OF THESE
PROVISIONS IS THAT SALES OF MAJOR DEFENSE EQUIPMENT
VALUED AT DOLS 25,000,000 OR MORE WOULD HAVE TO BE MADE
THROUGH FMS. THIS REQUIREMENT WOULD EXTEND ONLY TO
MATERIEL AND NOT RPT NOT TO TECHNICAL DATA OR DEFENSE
SERVICES, ALTHOUGH CONFERENCE REPORT STATES THAT DEFI-
NITION OF "MAJOR DEFENSE EQUIPMENT" AGREED TO AN UNDER-
STANDING THAT "SIGNIFICANT COMBAT EQUIPMENT" ON U.S.
MUNITIONS LIST WILL BE BROADENED TO INCLUDE "ELECTRONIC
EQUIPMENT, ASSIGNED A MILITARY DESIGNATION, WHICH IS TO
BE EXPORTED FOR MILITARY PURPOSES."

4. BILL ALSO PROVIDES THAT ANY PROPOSED FMS SALE OR
LICENSED COMMERCIAL EXPORT OF MAJOR DEFENSE EQUIPMENT
VALUED AT DOLS 7,000,000 RPT DOLS 7,000,000 OR MORE MUST
BE SUBMITTED TO CONGRESS FOR ITS REVIEW. PROPOSED CON-
TRACT OF SALE (IN FMS CASES) OR EXPORT LICENSE (IN COM-
MERCIAL CASES) MAY NOT BE ISSUED IF DISAPPROVED BY CON-
CURRENT RESOLUTION WITHIN 30 DAYS.

5. CONGRESS IS EXPECTED TO VOTE ON CONFERENCE REPORT
SOMETIME DURING WEEK OF APRIL 11. IF PASSED BY BOTH
HOUSES, BILL WILL GO TO PRESIDENT. ASSUMING BILL IS
PASSED AND APPROVED BY PRESIDENT, WE EXPECT THAT BILL WILL
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BECOME LAW SOMETIME DURING NEXT TWO TO THREE WEEKS.
PROVISIONS OUTLINED ABOVE WILL TAKE EFFECT SIMULTANEOUSLY
WITH BILL BECOMING LAW.

6. CONFERENCE REPORT IS SILENT AS TO WHETHER RESTRICTION
TO FMS CHANNELS OF SALES OF MAJOR DEFENSE EQUIPMENT
VALUED AT DOLS 25,000,000 OR MORE WOULD APPLY TO SALES
UNDER COMMERCIAL CONTRACTS ENTERED INTO BEFORE EFFECTIVE

DATE OF LAW. WE DID, HOWEVER, INFORM THE CONFERENCE IN OUR EXECUTIVE BRANCH POSITION ON SECTION IN QUESTION THAT WE CONSTRUED IT AS NOT APPLYING TO SUCH CONTRACTS AND WE INTEND TO SO CONSTRUE IT IN ABSENCE CLEAR EXPRESSION OF CONGRESSIONAL INTENT TO THE CONTRARY. SIMILAR CONSIDERATIONS WOULD APPLY TO "LETTER OF INTENT", BUT UNLIKE CASE WITH CONTRACT, EACH SUCH "LETTER OF INTENT" WOULD HAVE TO BE CAREFULLY EXAMINED AS TO INTER ALIA ITS CONTENT AND INTENT OF PARTIES TO BE BOUND THEREBY BEFORE WE COULD RELY ON IT AS BASIS FOR ISSUANCE OF EXPORT LICENSE.

7. IN SUMMARY, WE BELIEVE NEW LAW WILL PERMIT DEPT TO ISSUE LICENSES FOR EXPORTS TO NON-NATO COUNTRIES UNDER CONTRACTS ENTERED INTO PRIOR TO ENACTMENT FOR SALE OF MAJOR DEFENSE EQUIPMENT FOR DOLS 25 MILLION OR MORE. BEFORE ISSUING ANY SUCH LICENSE FOR EXPORT OF MAJOR DEFENSE EQUIPMENT VALUED AT DOLS 7 MILLION OR MORE, HOWEVER, WE WILL BE REQUIRED TO GIVE CONGRESS ADVANCE NOTICE AND OPPORTUNITY TO DISAPPROVE AS DESCRIBED PARA 4 ABOVE. EXPORTS UNDER SUCH CONTRACTS ENTERED INTO AFTER ENACTMENT CAN BE LICENSED ONLY FOR NATO COUNTRIES AND THOSE LICENSES ARE ALSO SUBJECT TO CONGRESSIONAL REVIEW PROCEDURES DESCRIBED IN PARA 4.

8. UNDER SECRETARY SISCO PLANS TO BRIEF RAYTEHON BOARD CHAIRMAN CHARLES FRANCIS ADAMS ON FOREGOING LEGISLATIVE FACTORS. EMBASSY SHOULD BRIEF PRINCE SULTAN AND, IF BELIEVES APPROPRIATE OR USEFUL, COORDINATE WITH RAYTHEON JIDDA.
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